

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELSIE I. LYBECKER,
Plaintiff,

vs.

THE PRUDENTIAL COMPANY
OF AMERICA; and UNION
PACIFIC CORPORATION,
Defendants.

No. 2:13-cv-00231-LRS

ORDER RE MOTION TO DISMISS
DEFENDANT PRUDENTIAL

BEFORE THE COURT is Plaintiff's Motion to Dismiss Defendant Prudential Insurance, ECF No. 37, filed on January 16, 2014 and opposed by Defendant Union Pacific Corporation "Union Pacific" (ECF No. 38).

Plaintiff requests that Defendant Prudential Company of America ("Prudential") be dismissed without prejudice arguing that Prudential does not belong in this action because prior to this action, Prudential paid Plaintiff all benefits, with interest, that were owing to her under the employee welfare benefit plan at issue in this matter. On December 19, 2013, Plaintiff agreed to voluntarily dismiss Prudential from this action because of the previous payment of interest Prudential made to her. No additional consideration was offered or accepted for this agreement to dismiss. Despite her agreement to dismiss Prudential, Plaintiff did not file a voluntary dismissal under Fed. R. Civ. P. 41(a)(1)(A) prior to December 31, 2013. On December 30, counsel for Plaintiff informed counsel for Prudential that Plaintiff would not move for default prior to filing a notice of voluntary dismissal. Plaintiff finally requested the voluntary dismissal of Prudential on January 16, 2014. Union Pacific subsequently served

1 discovery requests on Prudential on January 31, 2014. Plaintiff concludes that voluntary
2 dismissal of Prudential is of right because Prudential has not filed an answer or
3 dispositive motion in response to the complaint. Finally, Prudential asserts that it has
4 already provided to Union Pacific and Plaintiff the administrative record of Plaintiff's
5 claim for benefits.

6 Defendant Union Pacific argues that Plaintiff's motion is procedurally defective
7 and Prudential is in default. Defendant Union Pacific asserts that dismissal of Defendant
8 Prudential would be prejudicial to it for various reasons, including pending discovery
9 requests. ECF No. 38.

10 The Court has reviewed the arguments and is fully informed. The Court finds
11 dismissal is appropriate under Fed.R.Civ.P. 41(a)(1)(A). There are no counterclaims
12 pending against Defendant Prudential or other disqualifying factors precluding dismissal.
13 Defendant Union Pacific cites no case law suggesting dismissal is inappropriate under
14 the facts known at this juncture. Further, pending discovery requests from Union Pacific
15 to Prudential do not prevent dismissal. And although Defendant Union Pacific expresses
16 dissatisfaction with regard to the resolution of Plaintiff's claim(s) against Prudential,
17 resolution is to be commended in litigation.

18 **IT IS HEREBY ORDERED** and **ADJUDGED** that Plaintiff's Motion to Dismiss
19 Defendant Prudential Insurance, **ECF No. 37**, filed on January 16, 2014, is **GRANTED**,
20 pursuant to Fed. R. Civ. P. 41(a)(1)(A). Defendant The Prudential Insurance Company
21 of America is dismissed without prejudice, with each party to bear their own attorney's
22 fees and costs.

23 The District Court Executive is directed to enter this order and modify the caption
24 accordingly.

25 Dated this 28th day of February, 2014.

26
27 *s/Lonny R. Suko*

28 _____
LONNY R. SUKO
SENIOR U. S. DISTRICT COURT JUDGE